IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 383 OF 2005

Imtaiyazul Haque and others Petitioners

versus

State of Maharashtra & others Respondents

Mr.A.N.Maniar for petitioners.

Mr.A.G.Kothari for respondent no.4.

CORAM : H.L.GOKHALE AND
S.C.DHARMADHIKARI, JJ.

DATE : 01st April 2005

PC :

1. Heard Mr.Maniar in support of this petition. Mr.Kothari appears for respondents 3 and 4.

2. Petitioner joined services of Polytechnic College run by Anjuman-I-Islam Educational Institution on 16th October 1995. He has been facing a departmental inquiry on serious charges of outraging the modesty of a lady staff member, character assassination of not only the Principal but also a lady staff member, pasting copies of derogatory letters in the toilets which are open to the staff students and public etc.. He has

been suspended and the departmental inquiry is pending. He is also prosecuted criminally for these offences. The present petition is filed by contending that though he was suspended on 16th August 2004, the inquiry is not completed and therefore under the relevant rules he should be allowed to resume the services in the school. It is also prayed that his arrears of salary be paid over to him and also subsistence allowance.

3. Mr.Kothari submits that a three member committee is to be appointed to look into these charges. The management as well as the petitioner have appointed their representatives and third representative has also been appointed.

4. Mr.Maniar, learned counsel for petitioner submitted firstly that since the criminal proceeding is going on, the departmental action cannot proceed. He relies upon Rule 33(6) of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as "MEPS Rules" for short). Mr.Kothari on the other hand submits that the submission is misconceived. This rule will have to be read with sub rule 5 of that rule. All that this rule says is that if a person is

prosecuted and decision is one of conviction for the charges, it may not be necessary for the management to proceed with the inquiry on the same charge/s. Rule 33(6) reads as follows:-

> "33. Procedure for inflicting major penalties :-
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> (6) After the result of the criminal prosecution, a copy of the judgement shall be obtained by the Management and if the judgement is one of conviction for the charges and if any inquiry is also initiated by the Management against the employee on the basis of the same charges, it shall not be necessary to proceed with the inquiry on the same charges and the Management shall take action to terminate the services of the employee. The Management shall not however pass any order till the period upto which the employee is entitled to prefer an appeal or revision application to the higher Court against the conviction by the lower Court is over. If the appeal or revision application is preferred the Management shall not take any action till the conviction is finally confirmed by the higher Court. When the judgement in the criminal case appeal or revision application is one of acquittal, the Management shall consider in the light of the judgement whether it is necessary to institute or proceed with the inquiry. If the Management agrees that the acquittal is justified, it may drop the inquiry by certifying that it agrees with the findings of the Court. If the Management does not agree with the findings, it may proceed with the inquiry and inflict proper punishment."

5. As seen from the Rule it shall not be necessary for the management to proceed with the

inquiry on the same charges after conviction. That is the matter of discretion of management at that stage and Mr.Kothari relies upon a decision of Division Bench of this Court reported in 2001(3)-Bom.C.R.-785 (Subhash Amrutrao Dhone Vs. Bharat Petroleum Corpn. Ltd. and others) where a reference is made to the judgement of Apex Court holding that departmental action can continue simultaneously. In the circumstances there is nothing wrong if the management proceeds with the inquiry pending criminal proceedings.

6. The second submission of Mr.Maniar was based on Rule 37(2)(f) of the MEPS Rules, which has been interpreted by a Division Bench of this Court in the case of Hamid Khan Nayyar S/o. Habib Khan Vs. Education Officer, Amravati and others reported in 2004(4)-Mh.L.J.-513. This rule reads as follows :-

> "37. Procedure of Inquiry :-
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> (1) ... ...
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> (2) ... ...
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> (a) ... ...
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> (b) ... ...
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> (c) ... ...
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> (d) ... ...

> (e) ... ...
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> (f) The inquiry shall ordinarily be completed within a period of 120 days from the date of first meeting of the Inquiry Committee or from the date of suspension of the employee, whichever is earlier, unless the Inquiry Committee has, in the special circumstances of the case under inquiry, extended the period of completion of the inquiry with the prior approval of the Deputy Director. In case the inquiry is not completed within the period of 120 days or within the extended period, if any, the employee shall cease to be under suspension and shall be deemed to have rejoined duties, without prejudice to continuance of the inquiry."

Mr.Maniar submits that as per this rule and judgement the inquiry is to be completed within 120 days or within extended period and since it is not so completed and since the petitioner is under suspension, he shall be deemed to have been resumed on duties.

7. With respect to this submission Mr.Kothari points out that in the present case the school management has written to the Deputy Director of Education for extension of time to complete the inquiry. The Deputy Director instead of passing appropriate order on the application, forwarded that application further to the Government to take a decision thereon. He, therefore, submitted that concerned authority was expected

to grant extension since difficulties including that of non co-operation of petitioner were pointed out. However, instead of taking his own decision, the officer has forwarded the application to the State Government. In these circumstances he submits that the fiction as contemplated under this rule should not be enforced against the school management. Now it is material to note that though the rule speaks about completing the inquiry within 120 days or within the extended period, normally it shall be so. However, in a case where an application is made to the appropriate authority and the authority does not decide the application and particularly where the inquiry is not being completed because of non co-operation of the employee, the management cannot be blamed for the resultant situation. In the circumstances of the present case, when the application of the school is pending before the Government and the reply is not forwarded, the fiction under the rule cannot be brought into force. The intention behind the rule is to protect an employee where the management is responsible for the delay and not otherwise. Needless to state that in the event Government rejects this application for any reason, obviously the fiction will come to be

applied, and the petitioner may be resumed or be paid full wages. The rule however provides that the inquiry has to proceed and the petitioner must defend the charges which are levelled against him.

8. Mr.Maniar makes a grievance that only 50% of the wages are being paid by way of subsistence allowance though by now it should be revised to at least 75% and full wages should be paid after expiry of 120 days, if the inquiry is not so completed. Rule 34(1)(b)(i) provides that after expiry of four months if the employee is not responsible for delay in completing the inquiry, he is entitled to receive 75% subsistence allowance. The rule gives a right to the management also to reduce the subsistence allowance under that very rule if employee is responsible for delay. However, Mr.Kothari without going into this controversy states that after expiry of four months from the date of initial suspension, respondent management shall pay subsistence allowance @ 75%. We further clarify that if the management's application for extension is rejected, then obviously petitioner will be deemed not on suspension and receive full wages after expiry of 120 days. It will be open

to the respondent management to challenge Government's decision if adverse to it.

9. The inquiry has been pending for quite some time. Mr.Kothari states that the management is keen to proceed with the inquiry. Mr.Maniar assures full co-operation by petitioner. Mr.Kothari says that the committee will meet on Monday i.e. 4th April 2005 at 11.00 a.m.. Petitioner will attend before the committee and the committee will endeavour to record evidence in two weeks and to decide the charges within four weeks therefrom. Petition disposed of with these directions.

(H.L.GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)